IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 412 OF 2003

Vilas Dinkar Mohite .... appellant

versus

The State of Maharashtra ... Respondent.

Shri Vilas Tapkir for the appellant
Smt. S.D.Shinde APP for Respondent.

CORAM; V.G. PALSHIKAR &
SMT.NISHITA MHATRE,JJ.

DATED; 10TH NOVEMBER, 2006.

JUDGMENT: (Per Palshikar, J.)

1. Being aggrieved by the judgment and order dated 31st January 2003 passed by the 1st Ad-hoc Addl.Sessions Judge, Sangli in Sessions trial No. 70 of 2002, the appellants named above have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the advocate for the appellant and the Addl. Public Prosecutor we have reappreciated the evidence oral and documentary and from the reappreciation the prosecution story reveals as under:

3. Accused Vilas and deceased Vinayak are residents of village Kavalapur near Sangli. Their families are also residing at Kavalapur. Deceased Vinayak is having brothers, Vikas and Vaibhav. He is also having sister namely Sunita Rohidas Kavale who is wodow. It is the case of the prosecution that accused Vilas was having illicit relations with Sunita and on that count there were frequent quarrels. On 14-11-2001 there was quarrel on that count at bus stop between Vilas and Vinayak and Vaibhav. Deceased VInayak and his brother Vaibhav had assaulted accused Vilas on that count. However quarrel ended there itself.

4. On 14-11-2001 P.w.1 Tejas Mohite had gone to the house of Vinayak the deceased who is also known as Vinay and they together went towards Udupi hotel in the same village. When Vinayak and Tejas were proceeding to their houses by Church road at about 3.30 p.m. they saw accused Vilas coming from opposite direction. When he came near them he took out knife and started to assault Vinay. Vinay tried to run away, but was not successful. Vilas caught hold of Vinay and stabbed him at his abdoman. Tejas who was present there tried to separate Vilas from Vinay to prevend him from assaulting further but could not succeed and Vilas gave two more blows to the victim and thereafter ran away. FIR was lodged by Tejas. On the basis of that

investigation was conducted and the accused was arrested. On completion of investigation he was charged under section 302 of IPC. The prosecution examined as many as seven witnesses to prove its case. The learned trial Judge, on accepting the evidence on record convicted the accused under section 302 IPC as aforesaid. We have to examine the correctness of the judgemnt of conviction passed by the learned trial Judge, in the light of the evidence as re-appreciated by us.

7. P.w.1 Tejas is an eye witness to the assault. Tejas was the friend of Vinay. He was also the friend of accused Vilas and he has deposed before the court that on 14-11-2001 at 3.30 p.m. when he was proceeding with Vinay, Vilas the accused came from the opposite direction, took out the knife and stabbed Vinay in the abdoman three times. Tejas saw it and tried to save Vinay. He also tried to prevent Vilas from assaulting but was unsuccessful. He therefore went to the house of Vinay to report about his being injured but could not tell as his mother is dumb. There were no other persons in his house. So he went to other people from the locality and came back to the spot and found sister of the victim, brother of the victim and Vaibhav there. With their assitance the injured was taken to the hospital where it was pronounced by the doctor P.w. 5

that the victim was dead on arrival. The witness has been extensively cross examined but his trustworthyness was not at all reduced or shaken by the cross examination. His presence on the spot is accepted. His friendship is undisputed. He has given correct account of what has happened. The entire testimony of this witness is totally corroborated by the testimony of P.w.2 Dayanand who was another eye witness to the assault.

9. P.w.2 Dayanand has deposed before the court in a very effective manner how the assault took place. He is obviously an eye witness. His presence also cannot be doubted because he had come to the hotel for eating something as he was feeling hungry. He was on his scooter. He saw the accused assaulting the victim. He saw someone dragging the accused from behind to prevend continuation of the assault. He was standing there when the accused came running towards him amd wamted him to start the scooter. The witness did not oblige and therefore the accused again asked him to start the scooter to help him to run away. The witness did not oblige and the accused ran away. The deposition of this witness is definitely a ring of truth around it. He narrates what he saw. He knew P.w.1 Tejas but Tejas was dragging the accused from behind and therefore he did not identify the witness as the person dragging the

accused and therefore did not say so in his deposition. The learned advocate appearing for the accused submitted that he is a chance witness. There was no reason for him to be there at around 3.30. He has stated falsehood that he was feeling hungry and has come there. The testimony of this witness was also used by the learned advocate to discredit the P.w.1. The submission is that though the incident was well narrated by the witness P.w.2, he does not identify Tejas who was present there. Therefore his testimony is a concoction. P.w.1 is sought to be assailed by learned advocate, by saying that if existence of P.w.2 at the scene of offence is to be believed, it is impossible that Tejas would not have noticed it. We are unable to accept either of the submission for the reason that P.w.1 was busy in averting the calamity, he might not have been noticed arrival of P.w.2 on scooter and his watching of the assault. Non-mentioning of the presence of P.w.2 by P.w.1 cannot have any significance therein. In our opinion the testimony of P.w.1 stands duly corroborated by the testimony of P.w.2.

9. P.w.3 Sachin is the panch witness who has proved the spot panchanama and he has deposed that he noted blood lying at the spot. P.w.4 Prabhakar is also a panch to recovery of the clothes of the accused and recovery of knife at the instance of the accused. On

the testimony of this witness it is proved that the knife used as weapon was recovered at the instance of the accused by the police. We have already noted that P.w.5 Haribhau is the doctor who was in the hospital where Vinay was carried in an injured stage by his brother and P.w.1. It is this doctor who declared him dead on arrival. Relying on the contention of this doctor, it was argued by the the learned advocate for the appellant that according to the evidence of this doctor there was excessive bleeding and the victim died before he reached the hospital. In view of this deposition and excessive bleeding as alleged by the doctor having taken place, we will have to reject the testimony of P.w.1 as got up witness because since he accompanied the victim to the hospital, did not have any blood stain on his clothes. If a person bleeding with such injuries being carried to the hospital, it is impossible that the career would not have any blood stain on his person. This argument appears to be impressive. It has been categorically stated by P.w.1 as under:

> " When I went in the crowd, I saw Vinay lying supine. Near him, his brother Vaibhav and sister Sunita were weeping. I went and brought a ricksaw. I myself, Vaibhav and Sunita took Vinay to civil hospital, Sangli.

The doctors examined him and declared him dead."

10. Brother Vaibhav and sister Sunita of the victim were the person who carried the injured to the hospital. The witness P.w.1 had gone out to fetch a rickshaw and then all of them carried Vinay to hospital. There is no question put to him in the cross examination as to why there was no blood on his clothes. He has clearly stated that there was no blood stains on his clothes. Such eventuality can often happen but it is natural that the injured was carried by his brother and sister into the rickshaw to the hospital and p.w.1 though is a close friend and merely because there is no blood stains on his clothes, it cannot be infer that the witness is telling falsehood.

11. P.w.7 Isak is the police official who noted the telephone message on which he was told that there is an incident of assault and one Vilas has assaulted one Vinay. He has proved the entry made by him accordingly. P.w.6 is the investigating officer who has proved the panchanama and has deposed that recovery of the knife or dragger was made by police at the instance of the accused. The knife or dragger was analysed chemically by the C.A. His report disclosses that it had blood stains of human blood of his group.

'O' was the group of the blood of victim Vinay and has conclusively proved by this very report. The prosecution has thus proved beyond reasonable doubt that the accused was the person who mercilessly beaten the victim in the abdoman and there is no error in the finding recorded by the learned Judge. We are in respectful agreement with the same. No other contentions are raised on behalf of the accused. In our opinion no case whatsoever has been made out for interference. The appeal is therefore dismissed. The conviction and sentence passed by the lower court is hereby confirmed.

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